

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

THOMAS E. PEREZ, Secretary of Labor,	§	
United States Department of Labor,	§	
	§	
Plaintiff,	§	Civil Action No.
	§	
v.	§	
	§	
DAVID KEEVER, J.E. KEEVER	§	
MORTUARY, INC. and J.E. KEEVER	§	
MORTUARY, INC. SIMPLE IRA PLAN,	§	
	§	
Defendants.	§	

**COMPLAINT**

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor, brings this action against Defendants David Keever, J.E. Keever Mortuary, Inc. and J.E. Keever Mortuary, Inc. Simple IRA Plan, pursuant to Sections 502(a)(2) and 502(a)(5), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(5), of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001 *et seq.* (“ERISA”), for appropriate equitable and remedial relief under ERISA Sections 409 and 502(a)(5), 29 U.S.C. §§ 1109 and 1132(a)(5); to enjoin violations of the provisions of Title I of ERISA; and to obtain other appropriate relief to redress violations and to enforce the provisions of Title I of ERISA.

**I. JURISDICTION**

Jurisdiction of this action is conferred upon this Court by ERISA Section 502(e)(1), 29 U.S.C. § 1132(e)(1).

**II. VENUE**

Venue of this action lies in the United States District Court for the Northern District of Texas, Dallas Division, pursuant to ERISA Section 502(e)(2), 29 U.S.C. § 1132(e)(2).

### **III. THE PLAN**

Defendant J.E. Keever Mortuary, Inc. Simple IRA Plan (“Plan”) is, and at all times hereinafter mentioned was, an employee benefit plan within the meaning of ERISA Section 3(3), 29 U.S.C. § 1002(3). The Plan was established by and, at all times hereinafter mentioned, was maintained by J.E. Keever Mortuary, Inc., an employer engaged in commerce or in an industry or activity affecting commerce and is subject to Title I, including Title I, Part 4 of ERISA, pursuant to ERISA Sections 4(a)(1) and 401(a), 29 U.S.C. §§ 1003(a)(1) and 1101(a). At all times relevant to this action, the Plan was administered in Ennis, Texas, within the jurisdiction of this Court.

### **IV. THE DEFENDANTS**

A. Defendant J.E. Keever Mortuary, Inc. was, at all times relevant to this action, a Texas corporation engaged in the business of funerals and burials and had a place of business at 408 N. Dallas Street, Ennis, Texas 75119, within the jurisdiction of this Court. At all times hereinafter mentioned, Defendant J.E. Keever Mortuary, Inc. has been an employer and a Plan Sponsor with respect to the Plan within the meaning of ERISA Sections 3(5) and 3(16)(B), 29 U.S.C. §§ 1002(5) and 1002(16)(B). At all times hereinafter mentioned, Defendant J.E. Keever Mortuary, Inc. had or exercised discretionary authority, control and responsibility over Plan management and administration and had actual control over Plan assets. Thus, Defendant J.E. Keever Mortuary, Inc. has been a fiduciary with respect to the Plan within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A). In addition, at all times hereinafter mentioned, Defendant J.E. Keever Mortuary, Inc. was a party in interest to the Plan within the meaning of ERISA Section 3(14), 29 U.S.C. § 1002(14).

B. Defendant David Keever was, at all times relevant to this action, the president and 80 percent owner of J.E. Keever Mortuary, Inc. and acted on its behalf with respect to the Plan in Ennis, Texas, within the jurisdiction of this Court. At all times hereinafter mentioned, Defendant David Keever had and exercised discretionary authority, control and responsibility over Plan management and administration and had actual control over Plan assets. Thus, Defendant David Keever was a fiduciary and a party in interest with respect to the Plan within the meaning of ERISA Sections 3(14) and 3(21)(A), 29 U.S.C. §§ 1002(14) and 1002(21)(A).

C. Defendant J.E. Keever Mortuary, Inc. Simple IRA Plan, as described in paragraph III above, is named as a defendant pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

#### **V. VIOLATIONS**

A. During the period January 15, 2010 through and including January 1, 2015, Defendants, fiduciaries with respect to the Plan, violated the provisions of ERISA, in that they:

(1) Caused the assets of the Plan to inure to the benefit of the Employer and Plan Sponsor and failed to hold Plan assets for the exclusive purposes of providing benefits to participants in the Plan and their beneficiaries in violation of Section 403(c)(1) of ERISA, 29 U.S.C. § 1103(c)(1);

(2) Failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries in violation of Section 404(a)(1)(A) of ERISA, 29 U.S.C. § 1104(a)(1)(A);

(3) Failed to discharge their duties with respect to the Plan with the care, skill,

prudence and diligence under the circumstances that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims in violation of Section 404(a)(1)(B) of ERISA, 29 U.S.C. § 1104(a)(1)(B);

(4) Failed to discharge their duties with respect to the Plan in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the provisions of ERISA in violation of Section 404(a)(1)(D) of ERISA, 29 U.S.C. § 1104(a)(1)(D).

(5) Caused the Plan to engage in transactions which they knew or should have known constitute a direct or indirect transfer to, or use by or for the benefit of, a party in interest of the assets of such Plan in violation of Section 406(a)(1)(D) of ERISA, 29 U.S.C. § 1106(a)(1)(D);

(6) Dealt with the assets of the Plan in their own interests or for their own account in violation of Section 406(b)(1) of ERISA, 29 U.S.C. § 1106(b)(1); and

(7) Engaged in transactions involving the Plan on behalf of a party whose interests were adverse to the interests of such Plan and the interests of its participants and beneficiaries in violation of Section 406(b)(2) of ERISA, 29 U.S.C. § 1106(b)(2).

B. Specifically, the Defendants engaged in the aforementioned violations and continue to violate ERISA by:

(1) failing to remit any employee contributions to the Plan during the period of January 15, 2010 to January 1, 2015;

(2) permitting J.E. Keever Mortuary, Inc., a party in interest, to use Plan assets for its own benefit during the period from January 15, 2010 to the present;

(3) failing to segregate Plan assets during the period of January 15, 2010 to the present; and

(4) failing to properly administer the Plan during the period of January 15, 2010 to the present.

#### **VI. DIRECT LIABILITY**

As a result of engaging in breaches of their fiduciary responsibilities, obligations or duties and by engaging in transactions prohibited by ERISA, as described in Part V, Defendants have caused the Plan to suffer financial losses for which they each are liable pursuant to ERISA Section 409(a), 29 U.S.C. § 1109(a).

#### **VII. CO-FIDUCIARY LIABILITY**

Pursuant to the provisions of ERISA Section 405, 29 U.S.C. § 1105, Defendants are personally liable for the breaches of fiduciary responsibility set forth in paragraph V above that are committed by any co-fiduciaries with respect to the Plan.

#### **VIII. PRAYER**

WHEREFORE, cause having been shown, Plaintiff prays that this Court:

1. Order Defendants to restore all losses to the Plan, with interest thereon, resulting from their breaches of fiduciary obligations and to correct all prohibited transactions and, if necessary, to offset any claims which they may have against or with the Plan against the amount of losses, including lost opportunity costs, resulting from their violations;

2. Order Defendants to appoint an independent fiduciary to the Plan to be approved by Plaintiff and the Court for the limited purpose of ensuring that Plan assets recovered in this action are disbursed to Plan participants with quarterly progress reports to the Plaintiff, and once

all funds have been disbursed, to terminate the Plan;

3. Order that any expenses associated with the appointment of an independent fiduciary and the subsequent administration and termination of the Plan be paid by Defendants;
4. Permanently enjoin Defendants from violating the provisions of ERISA;
5. Permanently enjoin Defendants from acting as a fiduciary to the Plan or any other employee benefit plan covered by ERISA;
6. Award Plaintiff costs of this action; and
7. Provide such other remedial relief as may be appropriate.

Respectfully Submitted,

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